

Agenda

Item #9



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission Members
From: Jonathan Wayne, Executive Director
Date: January 20, 2009
Re: Remand of June 12, 2006 Finding of Violation against Michael Mowles

In the 2004 general election, U.S. Senators Olympia Snowe and Susan Collins endorsed Michael Mowles as the Republican nominee for the State House of Representatives, District 121, in Cape Elizabeth. He did not win that general election.

In 2006, Mr. Mowles competed with Jennifer Duddy in the primary election for the Republican nomination for House District 121. In the weekend before the primary election, Republican voters in the district received the attached mailer which included 2004 quotations from the U.S. Senators. Senator Snowe's quotation expressly urged the election of Mr. Mowles ("I urge you to elect Mike Mowles to the Maine House of Representatives") Mr. Mowles did not seek the Senators' permission to use their 2004 endorsements in the 2006 primary election.

On Monday, June 12, 2006 (the day before the primary election), Ms. Duddy, an attorney, filed a complaint with the Commission concerning the mailer. The Commission was required by statute to meet within 24 hours to hear the complaint, and met the same day on which the complaint was received (June 12). Ms. Duddy participated in the meeting by telephone, but Mr. Mowles declined to participate in the meeting other than by letter.

At the June 12 meeting, the Commission found Mr. Mowles in violation of 21-A M.R.S.A. § 1014-A for not obtaining the Senators' authorization to use their quotations in the 2006 primary election. The Commission took the lightest possible action against Mr. Mowles, other than to ignore 21-A M.R.S.A. § 1014-A. The Commission did not assess a civil penalty or issue a press release as had been requested by Ms. Duddy. Had the Commission not found Mowles in violation, it is possible that Ms. Duddy could have challenged that decision in a court proceeding.

After the primary election, the Commission assessed a \$1 penalty at the request of Mr. Mowles' attorney, David Lourie. With the assistance of Mr. Lourie, Mr. Mowles brought a court action challenging the Commission's determination and arguing that the statute was unconstitutional.

Initially, the endorsement statute (21-A M.R.S.A. § 1014-A) was *upheld as constitutional* by the Maine Superior Court in a March 29, 2007 decision made by Justice Robert E. Crowley. The court found that the statute served a compelling state interest and was narrowly tailored to meet that interest.

On October 21, 2008, the Maine Supreme Judicial Court reversed the Superior Court, and struck the statute as unconstitutional. As a result, on December 4, 2008, the Maine Superior Court issued the attached Order of Remand directing the Commission to strike its 2006 finding of violation against Mr. Mowles. I am scheduling that order for your consideration at the January 29, 2009 meeting.

Thank you for your consideration of this matter.

STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-06-35

FILED -4 2:45

MICHAEL D. MOWLES, JR.

PLAINTIFF

VS.

ORDER OF REMAND

COMMISSION ON GOVERNMENTAL
ETHICS AND ELECTION PRACTICES

DEFENDANT

PURSUANT to the Law Court decision of October 21, 2008, the clerk is directed to make the following docket entry:

Case remanded to the Commission on Governmental Ethics and Practices to strike its finding of a violation.

Dated: *December 4, 2008*


Robert E. Crowley
Justice, Superior Court



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

June 12, 2006

Michael D. Mowles Jr.
423 Ocean House Road
Cape Elizabeth, ME 04107

Re: Duddy Complaint

Dear Mr. Mowles:

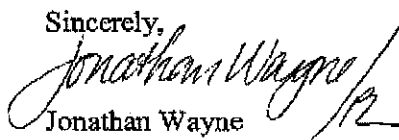
At a meeting held today by telephone, the members of the Commission on Governmental Ethics and Election Practices considered a complaint against your campaign filed by Jennifer Duddy concerning a flyer you sent in the Republican primary election for House of Representatives, District #121. That flyer contains language by U.S. Senators Olympia Snowe and Susan Collins, which was an endorsement of you in the 2004 general election. Ms. Duddy stated that she believed this language has misled voters into believing the Senators had endorsed you in tomorrow's Republican primary election. You declined to participate in the meeting, and instead provided the attached letter.

The Commission members considered the text of the flyer and the attached e-mail confirming conversations between Commission staff and staff of the U.S. Senators in which they denied any endorsement of you in the 2006 Republican primary election.

Because of the exigent circumstances present, the Commission members voted unanimously (3-0) that your use of that language in the flyer constituted an "endorsement" in the 2006 primary election and that your use of the endorsement in the flyer violated the Election Law because the U.S. Senators did not authorize your use of the endorsement for this election. (See 21-A M.R.S.A. §1014-A(1) and (2))

At its next meeting on June 22 at 9:00 a.m., the Commission members will consider whether to assess any forfeiture for the legal violation. The Election Law authorizes a civil forfeiture for this violation of up to \$200. If you wish to request a reconsideration of the finding of violation with the assistance of counsel, the Commission will consider your request at the meeting.

Sincerely,


Jonathan Wayne
Executive Director

cc: Jennifer Duddy

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

Title 21-A, §1014-A, Endorsements of political candidates

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§1014-A. Endorsements of political candidates

1. Definition. For purposes of this section, "endorsement" means an expression of support for the election of a clearly identified candidate by methods including but not limited to the following: broadcasting stations, newspapers, magazines, outdoor advertising facilities, direct mails or other similar types of general public political advertising or through computer networks, flyers, handbills, bumper stickers and other nonperiodical publications. [1995, c. 43, §1 (new).]

2. Authorization. A candidate may not use an endorsement unless the endorser has expressly authorized its use. The communication must clearly and conspicuously state that the endorsement has been authorized. If applicable, the communication must also satisfy the requirements of section 1014. [1995, c. 43, §1 (new).]

3. Civil forfeiture. A candidate who uses an endorsement without the authorization of the endorser violates this section and is subject to a civil forfeiture of no more than \$200. [1995, c. 43, §1 (new).]

4. Enforcement. The full amount of the forfeiture is due within 30 days of the commission's determination that an endorsement has been used without the endorser's authorization. The commission is authorized to use all necessary powers to collect the forfeiture. If the full amount of the forfeiture is not collected within the 30 days after the commission has determined that a violation of this section has occurred, the commission shall report to the Attorney General the name of the person who has failed to pay. The Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the forfeiture. This action must be brought in the Superior Court for the County of Kennebec or the District Court, 7th District, Division of Southern Kennebec. [1995, c. 43, §1 (new).]

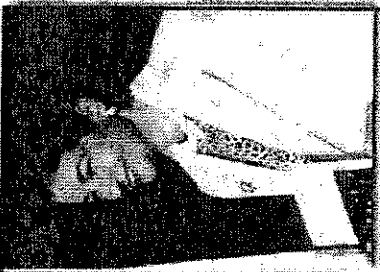
PL 1995, Ch. 43, §1 (NEW).

See What People Are Saying About

MIKE MOWLES

Representative to the Legislature

The Experience
Cape Elizabeth Needs in Augusta



“Mike Mowles is a results-oriented individual of great integrity. As a member of the Cape Elizabeth Town Council, he has demonstrated bipartisanship and the leadership qualities and experience to get the job done in Augusta. Mike’s knowledge of local government and budgets position him well to continue to lead on issues of tax reform and fair school funding for Cape Elizabeth. I urge you to elect Mike Mowles to the Maine House of Representatives...”

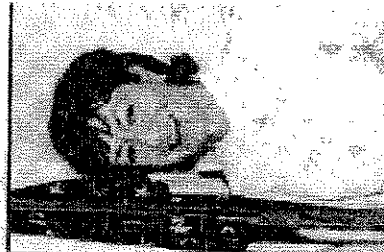
(October, 2004)

—U.S. Senator Olympia Snowe

“Mike Mowles exhibits the qualities of a really good Representative. Hardworking, thoughtful, passionate about issues that affect his community, Mike will be a wonderful asset in Augusta. He has the right experience for the job...”

(October, 2004)

—U.S. Senator Susan Collins



ATTENTION REPUBLICANS

On Tuesday, June 13th

**Please Join Your Neighbors
In Supporting**

MIKE MOWLES

Representative to the Legislature

JOIN US IN SUPPORTING MIKE MOWLES:

Bruce Blaisdell	Debra Harney	Lisa Mowles
Kristine Blaisdell	James Hewes	Irene O'Donnell
Merideth Blaisdell	Reid Jones	Rick O'Donnell
Betsy Colburn	Jodie Jordan	Jay Petersen
John Colburn	Susan LaTorre	Dale Shaw
Claudia Dricot	John Makrides	Denise Ross
Vaughn Dyer	Susan Makrides	Ted Ross
Cynthia Garfield	Jeff McClellan	Ann Underdown
Tzeana Gross	Kim McClellan	Frank Underdown
Owen Harney	Paul McGrath	Christine Zachman

Paid for and Authorized by the Candidate, 423 Ocean House Road, Cape Elizabeth, Jim Hewes, Treasurer

The Mullin Family
6 Dean Way
Cape Elizabeth, ME 04107

PRSRT STD
U.S. POSTAGE
PAID
PORTLAND, ME
PERMIT NO. 207